

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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MAR 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of
MILFORD BROADCASTING CO.
SHARON A. MAYER
For Construction Permit
for a new FM Station on
Channel 271C2
Milford, Iowa

) MM Docket No. 92-317
)
) File No. BPH-911003MI
)
) File No. BPH-911004MG
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To: Honorable Edward Luton
Administrative Law Judge

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO ENLARGE ISSUES

Sharon A. Mayer ("Mayer"), by her attorneys and pursuant to Section 1.229 of the Rules, hereby requests that the issues specified in this proceeding be enlarged against Milford Broadcasting Co. ("MBC") as follows.¹

To determine whether Kevin Galbraith can meet his loan commitment to Milford Broadcasting Co.; and

To determine whether, in light of the evidence adduced pursuant to the foregoing issue, the applicant is financially qualified.

1. Pursuant to the Standard Document Production Order set forth in Section 1.325 of the Rules, MBC produced certain documents to Mayer on February 23, 1993. Among these documents were two file memoranda attached hereto as Exhibit Nos. 1 and 2. One Memo to

¹ This Motion is timely filed within fifteen days of the receipt on February 23, 1993 of documents from MBC pursuant to the Standard Document Production Order.

No. of Copies rec'd
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File, Exhibit No. 1, described as a Base Plan a Financial Commitment to MBC from Kevin Galbraith as the Source of Funds for MBC. The Memo included a brief balance sheet, presumably for Mr. Galbraith, showing current assets and current liabilities. Included in current assets were Cash and Cash Equivalents of \$323,265, Marketable Securities of \$328,400 and a Note/Loan Receivable of \$64,600. As an alternative Plan, Exhibit No. 2, the Galbraith Enterprises Incorporated Profit Sharing Plan was listed as a source of funds amounting to \$250,000, based on Marketable Securities of \$282,000.

2. Section III of MBC's application on Form 301 stated that MBC's costs of construction and its first three months' operating expenses amounted to \$400,000, and listed Kevin Galbraith as the source of funds for the entire amount (See attached Exhibit No.3).

3. It is apparent from each balance sheet that there is insufficient cash to cover MBC's entire estimated costs of \$400,000. MBC must therefore look to Mr. Galbraith's other assets to cover the deficit of \$76,735. Although marketable securities in general were included in the memoranda, they were not identified with specificity as required by the Commission. Additionally, there was no identification of what constituted cash equivalents or what percentage of the \$323,265 attributed to cash or its equivalent represented cash equivalent. Further, no specificity was provided with respect to the entry "Note/Loan Receivable."

4. When the Commission revised the basic application Form 301 in 1989, the instructions to Form 301 stated that a person

lending funds to an applicant must provide a personal balance sheet or financial statement showing all liabilities and current and liquid assets sufficient to meet current liabilities. Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853, 3859, 3864 (1989) recon. denied, 5 FCC Rcd 7267 (1990).

5. Although the Commission did not return to its pre-1981 reporting requirements or require applicants to submit underlying documentation, it stated:

"However, as we did prior to 1981, we are now requiring that the applicant have such information and documentation on hand at the time it submits the application. We stress that when the applicant checks the box on Form 301 that it is financially qualified, it must have at that time sufficient liquid assets in excess of current liabilities and/or sufficient funds available from committed sources to construct and operate the facility. To provide guidance to the applicants on compiling the estimate and on the funding information an applicant will now be required to have on hand at the time it files an application, we are adding to our current instructions in Section III of Form 301 the instructions formerly used by the Commission to elicit financial qualifications information and documentation. Id. at 3859.

Those instructions stated that an applicant must have on hand the following:²

(c) For each person identified in response to Question 1(c), Section III who has agreed to furnish funds, purchase stock, extend credit, or guarantee loans, a balance sheet or a financial statement showing:

² Attached hereto as Exhibit No. 4 are the instructions to Form 301, June 1989, used by MBC in filing its application.

All liabilities and current and liquid assets sufficient to meet current liabilities;

Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit or guarantee loans; and

Net income after Federal income tax, received for the past two years. Id. at 3864.

6. In accord with the Commission's instructions in effect before 1981 and restored in 1989, applicants were and are required to identify or itemize current assets in stocks and bonds. In Lamar Life Broadcasting Co., 20 RR 2d 509, 26 FCC2d 112 (Rev. Bd. 1970), the Review Board assessed and granted a request for addition of a financial qualifications issue stating:

"In addition, (the applicant) fails to identify or to itemize current assets of \$5,500,000 in stocks and bonds; as a result, no credit can be given to the availability of funds from these sources." (See cases cited therein). Id. at 839.

Similarly, in Vista Broadcasting Co., Inc., 16 RR 2d 838, 18 FCC 2d 636 (Rev. Bd. 1969), the Board stated:

"It is well established that receivables, stocks and bonds and fixed assets, in the absence of proof of marketability or liquidity, affords no reasonable assurance that funds will, in fact, be available to meet commitments to an applicant for a radio station." Id. at 839.

7. Mr. Galbraith's balance sheets which were produced as a financing document do not show all liabilities nor did they identify any marketable securities specifically, other than to represent them as marketable. Thus, they cannot be credited as being an available source of funds. Further, there is no

identification of what constitutes "cash equivalents" in the balance sheet or their percentage of the total credited to cash. Likewise, the asset "Note/Loan Receivable" is not described. Vista Broadcasting Co., Inc., supra. In light of these patent deficiencies in the balance sheets used to support Mr. Galbraith's position as MBC's source of funds, inquiry must be initiated to determine whether Mr. Galbraith can meet his loan commitment to MBC and whether MBC was financially qualified at the time it filed its application.

Discovery

In the event the requested issues are added to this proceeding, Mayer requests that she be permitted to depose Kevin Galbraith, David H. Potratz and Sharyl L. Potratz with respect to the specified issues at a time and place to be mutually agreed upon by the parties. As principals of MBC, Mr. Galbraith and Mr. and Mrs. Potratz would be deposed with respect to their roles in developing the costs of construction and of operating MBC's proposed station for three months and in the financing of those costs. In addition, Mayer requests that MBC produce the following documents.

- (a) All documents which identify, describe or were created in the preparation and development of MBC's costs of constructing its proposed radio station.
- (b) All documents which identify, describe or were created in the preparation and development of MBC's cost of operating its proposed radio station for the first three months.

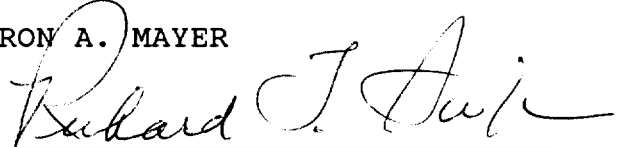
- (c) All documents which identify, describe and substantiate Kevin Galbraith's current assets and liabilities at the time MBC filed its application for construction permit, including, but not limited to, the Galbraith Enterprises, Inc. Profit Sharing Plan.

Wherefore, Mayer respectfully requests that her motion be granted and that the issues specified with respect to MBC be enlarged as described above.

Respectfully submitted,

SHARON A. MAYER

By:



Richard F. Swift
Her Attorney

TIERNEY & SWIFT
1200 18th Street, N.W.
Suite 210
Washington, D.C. 20036
(202) 293-7979

March 10, 1993

Exhibit No. 1

Kevin Galbraith
15 Horseshoe Road
Malvern, PA 19301

Memo to File (September 1991):

RE: Financial Commitment to Milford Broadcasting Company
Funds committed to construct and operate FM radio station for 3 months
\$400,000 commitment - See attached MBC filing

Subject: Source of Funds

BASE PLAN
=====

Funds from Kevin Galbraith
Base Plan: Source of Funds = WORKING CAPITAL

KEVIN GALBRAITH
WORKING CAPITAL
LIQUID ASSETS AVAILABLE TO SUPPORT COMMITMENT

Current Assets	
Cash and Cash Equivalents	323,265
Marketable Securities	328,400
Note/Loan Receivable	64,600
Total Current Assets	716,265
Current Liabilities	none
Total Current Liabilities	none
WORKING CAPITAL AVAILABLE THIS PROJECT:	716,265

Exhibit No. 2

Kevin Galbraith, Trustee
15 Horseshoe Road
Malvern, PA 19301

Memo to File (September 1991):

RE: Financial Commitment to Milford Broadcasting Company
Funds committed to construct and operate FM radio station for 3 months
\$250,000 commitment - See attached MBC filing

Subject: Source of Funds

ALTERNATIVE PLAN

=====

Alternative Source of Partial Funds - Further Financial Back-up
Source of Funds = Galbraith Enterprises Incorporated Profit Sharing Plan

KEVIN GALBRAITH, TRUSTEE
WORKING CAPITAL
LIQUID ASSETS AVAILABLE TO SUPPORT COMMITMENT

	value
Assets	=====
Marketable Securities	282,000
Total Current Assets	282,000

Liabilities	none

LIQUID ASSETS	282,000
	=====

Exhibit No. 3

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 400,000

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Kevin W. Galbraith 15 Horseshoe Lane Paoli, PA 19301	(215) 647-2700	Officer, Director, Shareholder	\$ 400,000
Galbraith Enterprises, Inc. Profit Sharing Plan 15 Horseshoe Lane Paoli, PA 19301 Attn: Kevin Galbraith Administrator/Trustee Principal Beneficiary	(215) 647-2700	Kevin Galbraith is Officer, Director, Shareholder	\$ 250,000

Exhibit No. 4

Instructions for FCC 301
Application for Construction Permit for Commercial Broadcast Station
(FCC Form 301 attached)

GENERAL INSTRUCTIONS

A. This FCC form is to be used to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes in the existing facilities of such a station. It consists of the following sections:

- I. GENERAL INFORMATION
- II. LEGAL QUALIFICATIONS
- III. FINANCIAL QUALIFICATIONS
- IV-A. PROGRAM SERVICE STATEMENT
- IV-B. INTEGRATION STATEMENT
- V. ENGINEERING DATA AND ANTENNA AND SITE INFORMATION
- VI. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
- VII. CERTIFICATIONS

An applicant for change in facilities need file only Sections I, V and VII. Do not file Sections II, III, IV-A, IV-B and VI.

B. Many references to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in 47 Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 17 "Construction, Marking and Lighting of Antenna Structure"
- (4) Part 73 "Radio Broadcast Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

C. Prepare an original and two copies of this form and all exhibits. This application with all required exhibits should be filed with the FCC's Washington, D.C. office in accordance with 47 C.F.R. Section 0.401.

D. By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to construct a new commercial AM, FM or TV broadcast station or to make changes in the authorized facilities of such a station are required to pay and submit a fee with the filing of the application. See 47 C.F.R. Section 1.1112. A listing of the required charges is set forth in 47 C.F.R. Section 1.1104. Full payment of the required fee may be made by check, bank draft or money order payable to the Federal Communications Commission. An application submitted with an insufficient payment or with an inappropriate form of payment will be returned, along with the tendered payment, to the applicant without processing. Except for the limited circumstances enumerated in 47 C.F.R. Section 1.1111, an accepted fee payment will be retained by the government irrespective of the subsequent substantive disposition of the underlying application. For further information regarding fees, see 47 C.F.R., Part 1, Subpart G.

E. Public Notice Requirements:

- (1) 47 C.F.R. Section 73.3580 requires that applicants for construction permits for new broadcast stations and major changes in existing facilities (as defined in 47 C.F.R. Sections 73.3571(a)(1) (AM), 73.3572(a)(1) (television), or 73.3573(a)(1) (FM)) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with respect to major amendments thereto as defined in 47 C.F.R. Sections 73.3571(b) (AM), 73.3572(b) (television), and 73.3573(b) (FM).
- (2) Completion of publication may occur within 30 days before or after tendering of the application. Compliance or intent to comply with the public notice requirements must be certified in Section VII of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of 47 C.F.R. Section 73.3580. Proof of publication need not be filed with this application.

- F. A copy of this completed application and all related documents shall be made available for inspection by the public, pursuant to 47 C.F.R. Section 73.3526.
- G. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. **Defective or incomplete applications will be returned without consideration.** Furthermore, inadvertently accepted applications are also subject to dismissal.
- H. In accordance with 47 C.F.R. Section 1.65, the applicant has a **continuing obligation** to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.
- I. Amendments to previously filed applications should be prepared and submitted in triplicate (an original and two duplicate copies), signed in the same manner as the original application, and should contain the following information to identify the application being amended:
- (1) Applicant's name.
 - (2) Service (AM, FM or TV).
 - (3) Call letters or specify new station.
 - (4) Channel number (FM or TV) or frequency (AM).
 - (5) Community of license.
 - (6) File number (if known) of application being amended.
 - (7) Date of filing of application (if file number not known).

INSTRUCTIONS FOR SECTION I - GENERAL INFORMATION

A. The name of the applicant stated in Section I shall be:

- (1) if a corporation, the EXACT corporate name;
- (2) if a partnership, the names of all general partners, and the name under which the partnership does business;
- (3) if an association, the name of the individual(s) authorized to act on behalf of the association, and the name of the association;
- (4) if an individual applicant, the full legal name.

In all other sections of this form, the organization name alone will be sufficient for identification of the applicant.

B. In Section I use the following State abbreviations:

Alabama	AL	Kentucky	KY	Ohio	OH
Alaska	AK	Louisiana	LA	Oklahoma	OK
American Samoa	AS	Maine	ME	Oregon	OR
Arizona	AZ	Marshall Islands	MH	Palau	PW
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federal States of		Montana	MT	Texas	TX
Micronesia	FM	Nebraska	NE	U.S. Minor Outlying	
Florida	FL	Nevada	NV	Islands (etc.)	UM
Georgia	GA	New Hampshire	NH	Utah	UT
Guam	GU	New Jersey	NJ	Vermont	VT
Hawaii	HI	New Mexico	NM	Virginia	VA
Idaho	ID	New York	NY	Virgin Islands	VI
Illinois	IL	North Carolina	NC	Washington	WA
Indiana	IN	North Dakota	ND	West Virginia	WV
Iowa	IA	Northern Mariana		Wisconsin	WI
Kansas	KS	Islands	MP	Wyoming	WY

Section 310 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests in the manner set forth above with respect to corporate applicants, except that insulated limited partnership interests exceeding 50% may be multiplied rather than considered as a 100% interest. However, the multiplier is not used in calculating the limited partnership link in the ownership chain **UNLESS** the applicant is able to certify that the alien partner is effectively insulated from active involvement in the partnership affairs. For example, see Instruction A, above.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

- E. Commission policies and litigation reporting requirements for broadcast applicants have been revised with a view to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with its rules and policies. The categories of relevant non-FCC misconduct include: (1) misrepresentations to any other governmental unit resulting in criminal or civil violations; (2) criminal convictions involving false statements or dishonesty; (3) certain felony convictions; and (4) adjudicated violations of anticompetitive or antitrust laws that are broadcast related. The parameters of the revised policies and requirements are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rod 421 (1986).

INSTRUCTIONS FOR SECTION III - FINANCIAL QUALIFICATIONS

- A. All applicants filing Form 301 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. **DO NOT SUBMIT** Section III if the application is for changes in operating or authorized facilities.
- B. An applicant for a new station must attest it has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.
- C. Documentation supporting the certification of financial qualifications need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.
- D. (1)(a) The applicant must estimate the initial costs of constructing and operating the facility proposed in the application. The estimate for constructing the facility should include, but is not limited to, costs incurred for items listed below. In calculating costs for the items below, determine the costs for the items in place and ready for service, including amounts for labor, supervision, materials, supplies, and freight:

Antenna System (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting);

RF Generating Equipment (including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger);

Monitoring and Test Equipment (including frequency monitor, modulation monitor, oscilloscope, dummy load, vectorscope, and video monitors);

Program Origination Equipment (including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment);

Acquiring Land;

Acquiring, Remodeling or Constructing Buildings;

Services (including legal, engineering, and installation costs); and

Other Miscellaneous Items (including mobile and STL equipment, non-technical studio furnishings, etc.)

- (b) The estimate must also include the costs of operating the proposed facility for the first three months, including the costs of proposed programming, without relying on advertising or other revenues to meet operating costs. To arrive at an estimate of the total costs to be met by the applicant, the total construction costs should be added to the estimated cost of operation for three months.
- (2) The applicant must also identify, in the application, its sources of funding for the construction and operation of the proposed facility for the first three months. For each source of funding, the applicant must identify the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by the source. The total amount of funds to be supplied by all the sources listed should equal or exceed the estimated cost of construction and operation computed in accordance with paragraph (1) and stated in the application in response to Question 2, Section III.

The funding sources listed on the application should include, if applicable: existing capital, new capital, loans from banks (identified separately), loans from others (identified separately), profits for existing operations, donations, and net deferred credit from equipment suppliers (identified separately and determined by deducting from the deferred credit the down payment, payments to principal, and interest payments). (Note: If the first equipment payment is due upon shipment, the applicant must include five monthly payments; if due in 30 days, four monthly payments; if due in 60 days, three monthly payments, etc.)

- (3) The applicant must also have on hand, at the time it files its application, **BUT NEED NOT SUBMIT WITH THE APPLICATION**, the following documentation:

(a) For the applicant:

A detailed balance sheet at the close of a month within 90 days of the date of the application showing the applicant's financial position.

A statement showing the yearly net income, after Federal income tax, for each of the past two years, received by the applicant from any source.

- (b) For each person identified in response to Question 3, Section III, who has **already** furnished funds, purchased stock, extended credit, or guaranteed loans:

A copy of the agreement obligating the party to furnish funds, showing the amount furnished, the rate of interest, the terms of repayment, and security, if any.

- (c) For each person identified in response to Question 3, Section III, who has **agreed to** furnish funds, purchase stock, extend credit, or guarantee loans, a balance sheet or a financial statement showing:

All liabilities and current and liquid assets sufficient to meet current liabilities;

Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit, or guarantee loans; and

Net income after Federal income tax, received for the past two years.

Note: If the statement does not indicate current and liquid assets sufficient to meet the proposed commitments, the financial statement must be supplemented by a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

- (d) For financial institutions or equipment manufacturers, identified in response to Question 3, Section III, who have agreed to make a loan or extend credit:

The document by which the institution or manufacturer has agreed to provide the loan or credit, showing the amount of loan or credit, terms of payment or repayment of the loan, collateral or security required, rate of interest to be charged, and special requirements (e.g., moratorium on principal or interest, waiver of collateral, etc.); and

A statement from any parties required to provide special endorsements showing their willingness to provide such endorsements.


CERTIFICATE OF SERVICE

I, Hazel Y. Goodger, Secretary in the law firm of Tierney & Swift, hereby certify that I have on this 10th day of March, 1993, sent copies of the foregoing "Motion To Enlarge Issues" to the following:

- * The Honorable Edward Luton
Administrative Law Judge
Office of Administrative Law Judges
Federal Communications Commission
2000 L Street, N.W., Room 223
Washington, D.C. 20554

- * Paulette Laden, Esquire
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Linda J. Eckard, Esquire
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Suite 222
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for Milford Broadcasting Company


Hazel Y. Goodger

* Hand Delivery